

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 REBECCA COUSINEAU,

11 Plaintiff,

12 v.

13 MICROSOFT CORPORATION,

14 Defendant.

CASE NO. C11-1438-JCC

ORDER GRANTING IN PART  
MOTION TO SEAL DOCUMENTS

15 This matter comes before the Court on Plaintiff's motion to seal documents (Dkt. No.

16 68). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby

17 GRANTS in part the motion (Dkt. No. 68) for the reasons explained herein.

18 **I. BACKGROUND**

19 This is a putative class action lawsuit. Plaintiff alleges that Defendant's Windows Phone

20 7 software unlawfully tracked and stored information about the geographic location of personal

21 smart phones, even after the user had refused to consent to such tracking. (Dkt. No. 64 at 2.)

22 Plaintiff has filed a motion for class certification under seal (Dkt. No. 69), and a redacted version

23 of that motion (Dkt. No. 70). Plaintiff has also filed numerous documents supporting her motion

24 for class certification under seal (*See* Dkt. No. 71 (Declaration of Rafey Balabanian, Exs. A–D,

25 D–B–1–D–B–8, E–J, N, O). Plaintiff's motion is a placeholder motion under Local Civil Rule

26 5(g) and the parties' stipulated protective order, which was approved by the Court (Dkt. No. 53).

1 Defendant has filed a response to the motion to seal providing justifications for keeping certain  
 2 documents under seal. Local Rules W.D. Wash. LCR 5(g)(3); (Dkt. No. 85). Defendant has  
 3 agreed to the unsealing of other documents. (Dkt. No. 85.)

4 **II. DISCUSSION**

5 "Historically, courts have recognized a 'general right to inspect and copy public records  
 6 and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. of  
 7 Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435  
 8 U.S. 589, 597 & n. 7 (1978)). A party seeking to keep documents attached to a dispositive  
 9 motion under seal, must "meet the high threshold of showing that 'compelling reasons' support  
 10 secrecy." *Id.* at 1180. To keep documents attached to non-dispositive motion under seal, a party  
 11 need only show "good cause" under Federal Rule of Civil Procedure 26(c). *Id.*

12 Defendant argues that Plaintiff's motion for class certification is not dispositive and  
 13 therefore it need show only good cause to keep documents under seal. At least one other judge in  
 14 this district has concluded that requests to seal documents relating to class certification must  
 15 meet the higher "compelling reasons" standard. *See Kelley v. Microsoft Corp.*, No. C07-0475-  
 16 MJP, Dkt. No. 129 at 4 (W.D. Wash. Feb. 26, 2008). Here, the Court need not resolve that  
 17 question because Defendant has provided compelling reasons to maintain under seal or redact  
 18 specific documents supporting Plaintiff's motion for class certification.

19 "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure  
 20 and justify sealing court records exist when such 'court files might have become a vehicle for  
 21 improper purposes,' such as the use of records to . . . release trade secrets." *Kamakana*, 447 F.3d  
 22 at 1179 (quoting *Nixon*, 435 U.S. at 598). The Ninth Circuit has adopted the Restatement's  
 23 definition of a "trade secret" for purposes of sealing, stating that "a trade secret may consist of  
 24 any formula, pattern, device or compilation of information which is used in one's business, and  
 25 which gives him an opportunity to obtain an advantage over competitors who do not know or use  
 26 it." *In re Electronic Arts*, 298 Fed. App'x 568, 569–70 (9th Cir. 2008) (quoting Restatement of

1 Torts § 757, cmt. b)). Compelling reasons to seal may exist when sealing is necessary to prevent  
2 judicial documents from being used “as sources of business information that might harm a  
3 litigant’s competitive standing.” *Id.* at 569 (quoting *Nixon*, 435 U.S. at 598). Source code is a  
4 trade secret. *Agency Solutions.com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017  
5 (E.D. Cal. 2011).

6 The Court has reviewed the documents that Defendant seeks to maintain under seal. The  
7 Court notes that some of the documents are, at least in part, duplicative. (E.g., Dkt. No. 71-1 and  
8 Dkt. No. 71-9; Dkt. No. 71-2 and 71-10, Dkt. No. 71-3 and Dkt. No. 71-11). Nonetheless, the  
9 documents that Defendant asks the Court to maintain under seal are voluminous. The Court finds  
10 that it is appropriate to maintain under seal those documents that Defendant has requested be  
11 maintained under seal because they are technical specification and design documents, some of  
12 which include source code. The documents are “sources of business information that might harm  
13 [Defendant’s] competitive standing” if revealed. *Electronic Arts*, 298 Fed. App’x at 569.  
14 Accordingly, there are compelling reasons to keep the documents sealed. The portions of  
15 Plaintiff’s expert report and certain deposition testimony that Defendant seeks to have redacted  
16 are based on those documents. Accordingly, there are compelling reasons to redact Plaintiff’s  
17 expert report (Dkt. No. 71-4), and the deposition testimony of Defendant’s employees Cristina  
18 del Amo Casado (Dkt. No. 71-16), and Adam Lydick (Dkt. No. 71-19).

19 **III. CONCLUSION**

20 For the foregoing reasons, the Court hereby ORDERS as follows:

21 1. The Clerk is respectfully directed to ***maintain under seal*** Exhibits A, B, C, G, H,  
22 and N to the Declaration of Rafey S. Balabanian in Support of Plaintiff’s Motion for Class  
23 Certification (Dkt. Nos. 72-1–72-3, 72-17, 72-18, 72-24, 74, 75, 77).

24 2. The Clerk is respectfully directed to ***maintain under seal*** Exhibits D-B-1–D-B-8  
25 to the Declaration of Rafey S. Balabanian in Support of Plaintiff’s Motion for Class Certification  
26 (Dkt. Nos. 72-7–72-14).

1       3.     The Clerk is respectfully directed to ***unseal*** and file for public record the  
2 unredacted version of Plaintiff's Motion for Class Certification (Dkt. 69) and ***terminate*** the  
3 redacted motion (Dkt. No. 70).

4       4.     The Clerk is respectfully directed to ***unseal*** and file for public record Exhibits E, J  
5 and O to the Declaration of Rafey S. Balabanian in Support of Plaintiff's Motion for Class  
6 Certification (Dkt. Nos. 72-15, 72-20, and 72-25).

7       5.     Plaintiff is directed to ***file for public record*** redacted versions of Exhibits D, F  
8 and I to the Declaration of Rafey S. Balabanian in Support of Plaintiff's Motion for Class  
9 Certification (Dkt. Nos. 72-4, 72-16, 72-19, 76), obscuring the information highlighted in the  
10 Exhibits to the Declaration of Cristina del Amo Casado (Dkt. No. 86).

11           DATED this 16th day of September 2013.

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15           John C. Coughenour  
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John C. Coughenour  
UNITED STATES DISTRICT JUDGE